

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	:	
	:	
Verified Petition for approval of	:	
Rider POGCS – Parallel Operation of	:	17-0350
Retail Customer Generating Facilities	:	
Community Supply and associated	:	
revisions to various tariff sheets.	:	

ORDER

By the Commission:

I. PROCEDURAL HISTORY

On August 15, 2017, Commonwealth Edison Company (“ComEd”) filed a verified petition with the Illinois Commerce Commission (“Commission”) pursuant to Section 16-107.5 of the Public Utilities Act (“PUA”) (220 ILCS 5/16-107.5) requesting that the Commission issue an order on or before September 29, 2017, approving (i) ComEd’s proposed Rider POGCS – Parallel Operation of Retail Customer Generating Facilities Community Supply (“Rider POGCS”) and (ii) conforming revisions to the following existing tariffs: Rate RESS – Retail Electric Supplier Service (“Rate RESS”); Rider POG – Parallel Operation of Retail Customer Generating Facilities (“Rider POG”); Rider POGNM – Parallel Operation of Retail Customer Generating Facilities with Net Metering (“Rider POGNM”); Rider PORCB – Purchase of Receivables with Consolidated Billing (“Rider PORCB”); and Rider NAM – Non AMI Metering (“Rider NAM”). In support of its verified petition, ComEd also filed proposed Rider POGCS and revisions to related tariffs in “clean” format, attached thereto as ComEd Exhibit (“Ex.”) A, and in redlined “legislative” format, attached thereto as ComEd Ex. B.

In response to ComEd’s filing, the Environmental Law & Policy Center (“ELPC”), the Illinois Power Agency (“IPA”), the Illinois Competitive Energy Association (“ICEA”), the Coalition for Community Solar Access (“CCSA”), Vote Solar, and the Illinois Solar Energy Association (“ISEA”) filed petitions to intervene. No objections were raised to the petitions to intervene, and a duly authorized Administrative Law Judge (“ALJ”) of the Commission granted the petitions to intervene.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, a prehearing conference was held at the Commission’s office in Chicago, Illinois on September 1, 2017. At the prehearing conference, the ALJ established a schedule for Initial and Reply Comments, Draft Orders/Positions Statements, the Proposed Order, and Briefs on Exceptions.

On September 11, 2017, pursuant to the schedule established by the ALJ, ComEd, ELPC, and Vote Solar filed Joint Initial Comments (“Joint Init.”), and the following parties filed Initial Comments (“Init.”): the Staff of the Illinois Commerce Commission (“Staff”), CCSA, ICEA, and ELPC and Vote Solar (jointly, “ELPC/Vote Solar”). On September 13, 2017, the following parties filed Reply Comments (“Rep.”): ComEd, Staff, CCSA, ICEA, ELPC/Vote Solar, and ISEA.

On September 15, 2017, several parties filed Draft Proposed Orders and Position Statements. The ALJ issued a Proposed Order on September 18, 2017. On September 20, 2017, ComEd and ICEA filed Briefs on Exceptions. CCSA, ELPC, Vote Solar and ISEA filed a Joint Brief on Exceptions, also on September 20, 2017.

II. BACKGROUND

A. Statutory Framework

On June 1, 2017, Public Act 99-0906 (“PA 99-0906”) became effective and includes a variety of new and amendatory provisions to the PUA and the IPA Act (20 ILCS 3855, *et seq.*). Among these changes are revisions to Section 16-107.5 of the PUA – the Illinois net metering statute – that require electric utilities to allow net metering for, *inter alia*, retail customers holding “ownership or leasehold interest[s]” in eligible renewable electrical generating facilities and “subscriptions to community renewable generation projects.” 220 ILCS 5/16-107.5(l)(1)(A)-(C). Consistent with the Illinois General Assembly’s finding that “[d]eveloping community solar projects in Illinois will help to expand access to renewable energy resources to more Illinois residents,” these changes to Section 16-107.5 expand net metering generally and accommodate community renewable generation projects specifically. 20 ILCS 3855/1-5(7).

Specifically, Section 16-107.5(l) requires an electricity provider (Section 16-107.5(b)(iii) defines an “electricity provider” as either an electric utility or an alternative retail electric supplier) to provide net metering for the following types of projects:

- (A) properties owned or leased by multiple customers that contribute to the operation of an eligible renewable electrical generating facility through an ownership or leasehold interest of at least 200 watts in such facility, such as a community-owned wind project, a community-owned biomass project, a community-owned solar project, or a community methane digester processing livestock waste from multiple sources, provided that the facility is also located within the utility's service territory;
- (B) individual units, apartments, or properties located in a single building that are owned or leased by multiple customers and collectively served by a common eligible renewable electrical generating facility, such as an office or apartment building, a shopping center or strip mall served by photovoltaic panels on the roof; and

(C) subscriptions to community renewable generation projects.

220 ILCS 5/16-107.5(l)(1)(A)-(C).

Furthermore, Section 16-107.5(l) requires that “an electricity provider [] provide credits for the electricity produced by the projects described in paragraph (1) of this subsection (l).” 220 ILCS 5/16-107.5(l)(2). The statute specifies that “[t]he electricity provider shall provide credits at the subscriber’s energy supply rate on the subscriber’s monthly bill equal to the subscriber’s share of the production of electricity from the project, as determined by paragraph (3) of this subsection (l).” *Id.*

To address the billing complications associated with providing credits to subscribers, Section 16-107.5(l)(3) provides that “the owner or operator of an eligible renewable electrical generation project or community renewable generation project shall be responsible for determining the amount of the credit that each customer or subscriber participating in a project under this subsection (l) is to receive.” 220 ILCS 5/16-107.5(l)(3). The credit amount is determined pursuant to 220 ILCS 5/16-107.5(l)(3)(A)-(C).

In order to comply with these new provisions of Section 16-107.5(l)(1)-(3) of the PUA, electric utilities must file a tariff within 90 days of June 1, 2017, or on or before August 30, 2017, “describ[ing] the terms and conditions under which owners or operators of qualifying properties, units, or apartments may participate in net metering.” 220 ILCS 5/16-107.5(l-5). Similarly, Section 16-107.5(l) authorizes an electric utility to “revise its tariffs to implement the provisions of [PA 99-0906].” 220 ILCS 5/16-107.5(l). The Commission must enter an Order approving, or approving with modification, the proposed tariff sheets within 120 days of June 1, 2017, or on or before September 29, 2017. See 220 ILCS 5/16-107.5(l-5).

B. Proposed Rider POGCS and Related Tariff Revisions

Consistent with Section 16-107.5(l-5)’s directive that ComEd file a tariff that “describe[s] the terms and conditions under which owners or operators of qualifying properties, units, or apartments may participate in net metering” (220 ILCS 5/16-107.5(l-5)), ComEd proposed to place into effect Rider POGCS. See *generally* ComEd Verified Petition (“Pet.”). As discussed in the Purpose section of Rider POGCS, the purpose of this tariff is to allow for a Community Supply (“CS”) Beneficiary or a CS Subscriber to benefit from the production of electricity by CS Projects (CS Projects include those projects set forth in Section 16-107.5(l)(1)(A)-(C) of the Act) in which the CS Beneficiary or CS Subscriber has an interest, as applicable, as provided in subsection (l). See Joint Init., Ex. A, Rider POGCS, Sheet No. X1. The Joint Initial Comments submitted by ComEd, ELPC, and Vote Solar attached clarifying revisions to Rider POGCS (and related tariffs), which included changes to the Purpose section. See Section III, *infra*. Operationally, Rider POGCS accomplishes this by setting forth a number of “Prerequisites of Service” that must be fulfilled by the CS Project owner or operator and either the CS Beneficiary or CS Subscriber, as applicable, prior to the commencement of service. See *id.* Rider POGCS further describes the calculation and application of charges or credits, as applicable, associated with the CS Projects and their CS Beneficiaries or CS Subscribers. See *id.*, Sheet No. X4.

Section 16-107.5(*l*) also generally authorizes an electric utility “to revise its tariffs to implement the provisions of [PA 99-0906].” 220 ILCS 5/16-107.5(*l*)(3)(A). ComEd thus also proposed conforming revisions to several of its existing tariffs to fully implement PA 99-0906’s changes to Section 16-107.5 of the Act. See *generally* Pet., ComEd Exs. A and B; Joint Init., Ex. A. Specifically, ComEd proposed the following revisions:

- Rate RESS: Under the Continuing Obligation section, the proposed revisions add an obligation regarding data transmittal requirements for those RES-supplied retail customers that are CS Beneficiaries or CS Subscribers.
- Rider POG: The proposed revisions clarify the tariff’s scope and applicability, and set forth new service options that are applicable to CS Projects.
- Rider POGNM: The proposed revisions update the rider’s Miscellaneous General Provisions section to include a specific reference to the applicable section of ComEd’s General Terms and Conditions of the Company’s Schedule of Rates.
- Rider PORCB: Under the RES Continuing Obligations section, the proposed revisions add an obligation regarding data transmittal requirements for those RES-supplied retail customers that are CS Beneficiaries or CS Subscribers, as applicable.
- Rider NAM: The proposed revisions clarify that a retail customer cannot take service simultaneously under Rider NAM and under Rider POGCS.

See Pet., ComEd Exs. A and B; Joint Init., Ex. A.

ComEd requested that the Commission act on its Verified Petition no later than September 29, 2017, and authorize ComEd to file Rider POGCS and the aforementioned tariff sheets, with an effective date on or before October 9, 2017. See Ver. Petition at 5.

III. UNCONTESTED ISSUES

A. 40% Subscriber Cap

ComEd explains in its Verified Petition that the proposed tariffs are designed to satisfy the statutory requirement that an “electric utility subject to [Section 16-107.5 of the PUA] shall file a tariff to implement the provisions of subsection (*l*) of this Section, which shall, consistent with the provisions of subsection (*l*), describe the terms and conditions under which owners or operators of qualifying properties, units, or apartments may participate in net metering.” Pet. at 4; 220 ILCS 5/16-107.5(*l*-5). Section 16-107.5(*l*), in turn, identifies the three types of projects for which a utility must allow net metering. 220 ILCS 5/16-107.5(*l*)(1)(A)-(C). Consistent with these provisions, the initial version of Rider POGCS attached to ComEd’s Verified Petition included a definition of Community Supply (“CS”) Project that identified these three types of projects as qualifying projects. See Pet., ComEd Ex. A.

The initial version of Rider POGCS also defined a retail customer that subscribes to (or has an interest in) one of the three types of CS Projects as a “CS Beneficiary.” See *id.* A CS Beneficiary, in turn, must fulfill the prerequisites of service identified in the tariff before commencing service. See *id.* These prerequisites included, *inter alia*, the IPA Act’s definition of a “subscriber,” which requires a “subscription of no less than 200 watts to a community renewable generation project” and further limits a subscriber’s subscriptions to a total of no “more than 40% of the nameplate capacity of an individual community renewable generation project.” 20 ILCS 3855/1-10. Rider POG, Rate RESS, and Rider PORCB also incorporated the term CS Beneficiary. See Pet., ComEd Ex. B.

As reflected in Exhibit A to the Joint Initial Comments, ComEd and ELPC/Vote Solar identified clarifying changes related to the definition of CS Beneficiary that should be made to Rider POGCS, Rider POG, Rate RESS, and Rider PORCB. See Joint Init., Ex. A. According to the Joint Initial Comments, these changes are necessary to ensure that the terms and conditions applicable only to community renewable generation projects are not more broadly applied to the two other types of projects identified in the definition of CS Project. Joint Init. at 3. Section 16-107.5(l) requires that electric utilities allow net metering for three kinds of projects, one of which is a community renewable generation project defined by Section 1-10 of the IPA Act. 220 ILCS 5/16-107.5(l)(1)(C); see *also* 20 ILCS 3855/1-10. Section 1-10 also includes definitions of “subscriber” and “subscription,” which provide terms and conditions applicable to a retail customer’s interest in a community renewable generation project. See 20 ILCS 3855/1-10. Because the initial version of Rider POGCS included only one term (CS Beneficiary) to describe the retail customers that participate in all three kinds of projects, the Joint Initial Comments explained that the restrictions applicable to a “subscriber” inadvertently applied to all three project types rather than only to community renewable generation projects. These limitations include a “subscription of no less than 200 watts to a community renewable generation project” and a limit on a subscriber’s subscriptions to a total of no “more than 40% of the nameplate capacity of an individual community renewable generation project.” 20 ILCS 3855/1-10; Joint Init. at 3-4.

The revisions reflected in Ex. A to the Joint Initial Comments thus clarify the tariff provisions and ensure that the application of the statutory terms and conditions are neither enlarged nor constrained beyond their plain meaning. Key revisions to Rider POGCS include the following:

- CS Project definition: The revisions to this definition more fully incorporate the statutory descriptions of the three project types set forth in Section 16-107.5(l)(1)(A)-(C). Joint Init., Ex. A, Rider POGCS, Sheet No. X2.
- CS Beneficiary definition: The changes to this definition limit its scope to retail customers having interests in projects other than community renewable generation projects. *Id.*
- CS Subscriber definition: The addition of this definition applies only to a retail customer that has an interest in community renewable generation projects. *Id.*, Sheet No. X3.

- CS Beneficiary Prerequisites of Service: Consistent with the distinction drawn between CS Beneficiaries and CS Subscribers, the Prerequisites of Service section includes clarifications to distinguish between the requirements applicable to CS Beneficiaries and those applicable to CS Subscribers. Importantly, the provisions applicable to CS Beneficiaries have been revised to delete the restrictions that are applicable only to CS Subscribers of community renewable generation projects. *Id.*, Sheet No. X5.
- CS Subscribers Prerequisites of Service: These provisions include the unique limitations that are applicable only to CS Subscribers of community renewable generation projects. *Id.*

In addition, Rider POG, Rate RESS, and Rider PORCB reflect conforming changes to include the new “CS Subscriber” term.

B. Credit “Rollover” Mechanism

CCSA proposed a revision to Rider POGCS to clarify that “a subscriber/beneficiary is able to apply bill credits from one month to a future month’s bill” – *i.e.*, that the unused portion of a credit can rollover and reduce the balance of a subsequent bill. CCSA Init. at 8. ComEd accepted CCSA’s proposed change and stated that it intends to incorporate all Commission-approved changes in a compliance filing following the final disposition of this docket. See ComEd Reply at 3.

C. Definition of “Common Parent”

As part of the definition of a “subscriber,” Section 1-10 of the IPA Act provides that “[e]ntities that are affiliated by virtue of a common parent shall not represent multiple subscriptions that total more than 40% of the nameplate capacity of an individual community renewable generation project.” 20 ILCS 3855/1-10. CCSA noted that the term “common parent” is not defined by any Illinois statute or rule. CCSA Init. at 8. However, because CCSA expects that the IPA will address the definition of a common parent entity in its Long Term Renewable Resources Plan, it did not ask the Commission for an interpretation at this time, and instead stated that it “simply wishes to make the Commission aware that this term may warrant a clear definition in a future proceeding.” *Id.* In reply, ComEd noted that while it does not object to addressing the matter further during the IPA docket, it intends to continue to interpret the term “common parent” as referring to entities that are affiliated under a common tax identification number. ComEd Rep. at 3.

D. Commission Analysis and Conclusion

The Commission appreciates the parties’ efforts to reach agreement on these issues under this docket’s compressed timeframe, and approves the resolution of each issue. In particular, the Commission approves the tariff revisions reflected in Ex. A to the Joint Initial Comments, which clarify that the 40% cap applies only to community renewable generation projects. The Commission also approves the clarifying revision proposed by CCSA regarding the rollover of bill credits, which was accepted by ComEd. Finally, the Commission agrees with CCSA and ComEd that the interpretation of

“common parent” can be addressed in the docket to approve the IPA’s proposed Long Term Renewable Resources Plan. In the meantime, the Commission finds that it is reasonable for ComEd to continue to interpret the term as referring to entities that are affiliated under a common tax identification number.

IV. CONTESTED ISSUES

A. Community Supply Credit

1. ComEd’s Position

ComEd argues that the General Assembly has not invited the parties or the Commission to determine the components of the credit to be applied under Section 16-107.5(l)(2) of the PUA (220 ILCS 5/16-107.5(l)(2)). ComEd Rep. at 4. Rather, ComEd asserts that the legislature established the computation and value of the credit in no uncertain terms:

[A]n electricity provider shall provide credits for the electricity produced by the projects described in paragraph (1) of this subsection (l). The electricity provider shall provide credits at the subscriber’s energy supply rate on the subscriber’s monthly bill equal to the subscriber’s share of the production of electricity from the project, as determined by paragraph (3) of this subsection (l).

220 ILCS 5/16-107.5(l)(2). ComEd explains that consistent with the law’s clear direction, proposed Rider POGCS calculates “credits for the electricity produced” at the “energy supply rate,” which is either Rate BES – Basic Electric Service or Rate BESH – Basic Electric Service Hourly, as applicable. ComEd Rep. at 4; see also Joint Init., Ex. A. This results in the Community Supply Credit. ComEd Rep. at 4. ComEd explains that the additional, transmission-related credits that CCSA and ELPC/Vote Solar propose to add to the calculation, therefore, cannot be squared with the plain statutory language. *Id.*

First, ComEd points to Section 16-107.5(l)(2) as directing that the credits be calculated for “the electricity produced” at the “energy supply rate.” 220 ILCS 5/16-107.5(l)(2); ComEd Rep. at 4. In other words, the statute establishes a formula with two inputs – (i) the commodity supplied and (ii) the rate at which the commodity is to be compensated. With respect to the commodity, the legislature elected to focus only on the electricity production component of a CS Project – the physical commodity (or electrons) produced – and called for the credit to be calculated based on the tangible volume of electricity generated by the project. ComEd underscores that the law makes no mention of, or provision for, credits associated with transmission or other non-distribution services. ComEd Rep. at 4-5. Indeed, ComEd argues that contrary to ELPC/Vote Solar’s claim, transmission service is a delivery service under the PUA and ComEd’s tariffs – it is not a supply service. Section 16-102 of the PUA defines “delivery services” as “those services provided by the electric utility that are necessary in order for the transmission and distribution systems to function so that retail customers located in the electric utility’s service area can receive electric power and energy from suppliers other than the electric utility, and shall include, without limitation, standard metering and billing services.” 220

ILCS 5/16-102; see also Rate RDS, Sheet No. 49. ComEd states that the cardinal rule of statutory construction is to give effect to the legislature's intent, which is best ascertained by giving a statute its plain, ordinary, and popularly understood meaning. See *People v. Hanna*, 207 Ill. 2d 486, 497, 800 N.E.2d 1201, 1207 (2003). Because the transmission of electricity is not mentioned in the statute, the argument that it is somehow included must be rejected under a plain reading of the statute.

Second, ComEd explains that because CCSA and ELPC/Vote Solar ignore the statute's clear emphasis on "the electricity produced," they proceed down an unnecessary path of trying to ascertain the meaning of "energy supply rate" in a vacuum. ComEd Rep. at 5. ComEd further notes that their reliance on principles of statutory interpretation does not aid their argument, however. First, Illinois law supports a plain and ordinary reading of the phrase "electricity produced" to refer only to the physical commodity. See *Exelon Corp. v. Dep't of Revenue*, 234 Ill. 2d 266, 275, 917 N.E.2d 899, 905 (2009) (finding that electricity is "tangible personal property" rather than an intangible service). Similarly, where the General Assembly intended to include transmission services within certain provisions of the PUA, it has so stated. See, e.g., 220 ILCS 5/16-103.2(c), (e) (distinguishing energy from transmission services); 220 ILCS 5/16-111.5(b)(3)(vi) (same). Thus, the fact that the legislature elected to omit any reference to transmission services or credits in Section 16-107.5(l)(2) means that the General Assembly intended that they be excluded. See *Northern Moraine Wastewater Reclamation Dist. v. Ill. Commerce Comm'n*, 392 Ill. App. 3d 542, 565, 912 N.E.2d 204, 225 (2d Dist. 2009) ("Under the principle of *inclusio unius est exclusio alterius*, the enumeration of one thing in a statute is construed as the exclusion of all others."); see also *In re C.C.*, 2011 IL 111795, ¶ 35, 959 N.E.2d 53, 60 (2011) ("It is well settled that where the legislature includes particular language in one section of a statute, but omits it in another section of the same act, courts presume that the legislature acted intentionally in the exclusion or inclusion."); *In re J.L.*, 236 Ill. 2d 329, 341, 924 N.E.2d 961, 968 (2010).

Lastly, ComEd explains that its bill format further demonstrates and confirms that the electricity/energy supply charge is separate from transmission services charges. ComEd Rep. at 6. As shown on the sample bill presented in CCSA's Initial Comments, the monthly charges are separated into "Supply," "Delivery," and "Taxes & Fees," and then further broken down into line item charges under each heading. *Id.*; see also CCSA Init. at 6. Under "Supply," three separate line item charges are included – Electricity Supply Charge, Transmission Services Charge, and Purchased Electricity Adjustment." CCSA Init. at 6. For customer convenience, ComEd began presenting the Transmission Services Charge under "Supply" as part of its implementation of Section 16-118(c) of the PUA, which gives alternative retail electric suppliers the option to have utilities, such as ComEd, purchase their receivables. ComEd Rep. at 5-6. However, no provision is made in Section 16-107.5(l)(2) for a separate Transmission Services credit, and the placement of the Transmission Services Charge on the bill cannot change the law. *Id.* at 6.

At bottom, ComEd argues that because the statute is focused only on the electricity produced rather than on a bundle of elements (e.g., transmission services), CCSA and ELPC/Vote Solar cannot now rewrite Section 16-107.5(l)(2) to include credits for these elements following the law's passage.

2. CCSA's Position

CCSA opines that community solar was enabled in Illinois, in part, to “encourage private investment in renewable energy resources, stimulate economic growth, enhance the continued diversification of Illinois' energy resource mix, and protect the Illinois environment...which should benefit all citizens of the State, including low-income households.” PA 99-0906, Section 1(a)(1). It is widely recognized that increasing distributed renewable energy sources can achieve all of these things, in addition to enhancing grid resilience, reducing the need for transmission and distribution upgrades, lowering peak rate spikes, enhancing environmental justice, and improving human and environmental health. CCSA Init. at 5.

For purposes of determining the credit that an electricity provider shall provide for electricity produced by a Community Solar Project, Section 16-107.5(l)(2) of the PUA states that credits shall be provided “at the subscriber’s energy supply rate,” a term that is not explicitly defined in the statute. CCSA submits that the CS compensation described on ComEd’s Original Sheet No. X12 should include any volumetric non-distribution elements of the bill included on ComEd bills under the “Electricity Supply Services,” including the volumetric transmission rate (listed as the “Transmission Services Charge” on a customer’s bill). CCSA Init. at 5-6.

CCSA states that there are several reasons that this rate should be included in a participant’s credit. Foremost, the Transmission Services Charge is classified under the Supply Services section of a customer’s bill. The bill explanation found on ComEd’s website contains a footnote that clarifies that, “Transmission Services Charge, Electricity Supply Charge and Purchased Electricity Adjustment (PEA) are electricity supply related line items.” Because of ComEd’s own characterization of this charge on customer’s bills, it should be included in the customer’s energy supply credit. CCSA opines that the failure to include this charge in the credit calculation risks creating confusion among its customers. CCSA Init. at 6.

CCSA asserts that including transmission services in the community supply credit would also provide a more meaningful credit that would allow more low- to moderate-income (“LMI”) customers to participate in the program. CCSA members’ experience from around the country has shown that, without a credit that provides tangible economic benefits, LMI customers cannot afford to participate in a community solar program, counter to the intent of PA 99-0906 (See PA 99-0906, Findings Section 1(a)(1) and 1(b) and the IPA Act, 20 ILCS 3855/1-1 et seq., Section 1-5(7)). Including this transmission charge in the credit rate will improve the success rate of mass market customers as well, as they will be more likely to sign up and maintain their subscriptions if they see a tangible benefit on their monthly bills. CCSA Init. at 7.

CCSA also notes that CS Projects feed energy into the local distribution grid, so customers and the utility are not relying on the transmission system as much. Moreover, build-out of more local distributed solar will tend to reduce overall transmission needs over time in the future. Thus, CCSA believes that it makes sense to interpret “energy supply rate” broadly to include a transmission service credit for the purposes of this program. CCSA Init. at 7.

Furthermore, transmission considerations will likely be factored into a future proceeding to create a locational distributed generation rebate, as required by Section 16-107.6 of the PUA. Until CCSA has concrete data to inform the creation of the location distributed generation rebate, CCSA requests that the transmission services charge be included in the calculation of the CS credit value under Rider POGCS. CCSA Init. at 7.

3. ELPC/Vote Solar's Position

ELPC/Vote Solar note that PA 99-0906 creates a new statewide community solar program in Illinois. The legislature intended this new community solar program to "expand renewable energy generating facility access to a broader group of energy consumers, to ensure robust participation opportunities for residential and small commercial customers and those who cannot install renewable energy on their own properties." 20 ILCS 3855/1-75(c)(1)(N). To implement these legislative goals, the PUA requires electric utilities to provide monetary "credits" on the bills of customers that choose to "subscribe" to a shared community solar project that represent the subscribers' proportional "share" of the output of the facility. The law states that:

The electricity provider shall provide credits at the subscriber's energy supply rate on the subscriber's monthly bill equal to the subscriber's share of the production of electricity from the project...

220 ILCS 5/16-107.5(l)(2). ELPC/VS Init. at 2-3.

The phrase "energy supply rate" is not defined in the statute, but the context and purpose of PA 99-0906 help shed light on the legislature's intent. The legislature found and declared that "[d]eveloping new renewable energy resources in Illinois, including brownfield solar projects and community solar projects, will help to diversify Illinois electricity supply, avoid and reduce pollution, reduce peak demand, and enhance public health and well-being of Illinois residents." PA 99-0906, Sec. 5 (amending 20 ILCS 3855/1-5(6)). The legislature also found that "[d]eveloping community solar projects in Illinois will help to expand access to renewable energy resources to more Illinois residents." *Id.* (amending 20 ILCS 3855/1-5(7)). ELPC/VS Init. at 3.

ELPC/Vote Solar state that the General Assembly made it clear that it intended the law's renewable energy programs to "benefit all citizens of the State, *including low-income households*." PA 99-0906, Sec. 1(a)(1) ("Findings") (emphasis added). Similarly, "[t]he General Assembly finds that *low-income customers should be included* within the State's efforts to expand the use of distributed generation technologies and devices." PA 99-0906, Sec. 1(b) ("Findings") (emphasis added). This special focus on the needs of low-income customers is reflected in the General Assembly's "goals and objectives" for the IPA, which direct the IPA to design and implement renewable energy programs to "enhance public health and well-being of Illinois residents, including low-income residents." 20 ILCS 3855/1-5(H) (emphasis added). ELPC/VS Init. at 3-4.

ELPC/Vote Solar assert that the legislature's explicit intent to assist low-income residents is particularly relevant to the Commission's interpretation of community solar bill credits in this docket. The Commission should account for each one of these legislative purposes when interpreting and clarifying the meaning of words and phrases

in the Act, especially to the extent that those words are susceptible to multiple interpretations. *Advincula v. United Blood Servs.*, 176 Ill. 2d 1, 18 (Ill. 1996). "In order to determine legislative intent, a statute must be read as a whole and all relevant parts must be considered by the court." *Id.* at 16-17. ELPC/VS Init. at 4.

ELPC/Vote Solar explain that ComEd bills are generally divided into three parts: (1) charges that are related to the supply of electricity; (2) charges that are related to the delivery of electricity; and (3) taxes and fees. The "charge details" on a sample ComEd residential bill clearly delineate these three components. Energy supply charges include the electricity supply charge and transmission services charge, while energy delivery charges includes the customer charge, metering charge, and distribution facilities charges. ComEd's website also includes an "Explanation of Billing Line Items" that divides the bill into the same three categories: supply, delivery, and taxes/other. In a footnote, ComEd confirms that the "transmission services charge" is an "electricity supply related line item." ELPC/VS Init. at 4-5.

Despite the fact that ComEd identifies transmission as a supply-related line item on its bills and customer materials, ComEd proposes to exclude transmission from the bill credits of community solar subscribers. In other words, ComEd interprets the phrase "energy supply rate" to include only the "Electricity Supply Charge" and nothing else, even though ComEd charges customers for other "supply related line items" on their bill. ComEd's interpretation is unreasonably narrow and at odds with both the legislative intent of the statute and the broader organization of ComEd bills into categories for energy supply, delivery services, and taxes/other. The structure of ComEd's bills confirms that transmission charges should be part of the "energy supply rate" used to calculate community solar bill credits. To the extent there is any ambiguity, the Commission should interpret the statute to promote the legislative intent of the community solar program and the broad legislative purposes of PA 99-0906. *People v. Jameson*, 162 Ill. 2d 282, 288 (Ill. 1994). ComEd's decision to exclude transmission will reduce the value of community solar bill credits by approximately 20%, which will limit the value of the program and make it harder for lower-income residents to participate, as described further in Section D below. ELPC/VS Init. at 5-6.

ELPC/Vote Solar explain that the PUA does not define the phrase "energy supply rate," but the General Assembly's later use of the same phrase in the same section of the law - the only other place that the phrase "energy supply rate" appears in the entire PUA - confirms that the General Assembly intended to include volumetric supply-related charges like transmission when it used the phrase "energy supply rate" in the community solar bill crediting section of the Act. Section 16-107.5 of the PUA contains all of the PUA's "net metering" provisions. Community solar bill credits are discussed in subsection (l)(2). Just a few pages later, at subsection (n), the statute describes the process for providing net metering credits to customers that take service after the utility reaches a net metering threshold of 5%. See 220 ILCS 5/16-107.5(n). Subsection (n)(3) includes the same phrase "energy supply rate" as subsection (l)(2), but the additional context in subsection (n)(3) helps to clarify the General Assembly's intent to include volumetric supply-related charges like transmission:

The charge or credit that the customer receives for net electricity shall be at a rate equal to the customer's energy

supply rate. The customer remains responsible for the gross amount of delivery services charges, supply-related charges that are kilowatt based, and all taxes and fees related to such charges.

220 ILCS 5/16-107.5(n)(3). ELPC/VS Init. at 6-7.

ELPC/Vote Solar note that the charge or credit for net metering shall be at the customer's "energy supply rate." The statute explicitly excludes: (1) delivery services charges; (2) supply-related charges *that are kilowatt based*; and (3) all taxes and fees related to such charges. The clear implication is that other supply-related charges-i.e. those that are *not* kilowatt based-should be included in the phrase "energy supply rate" as it is used in subsection (n)(3). Transmission charges are clearly supply-related. The transmission services charge on ComEd bills is also not "kilowatt based;" it is a "kilowatt-hour based" (per kWh) volumetric charge. Thus, ELPC/Vote Solar conclude that because transmission charges are not "supply-related charges that are kilowatt based," the General Assembly intended such transmission charges to be included as part of the "energy supply rate" as that phrase is used in subsection (n)(3). ELPC/VS Init. at 7.

Words used in two sections of the same statute should be given the same meaning. *People v. Maggette*, 195 Ill. 2d 336, 349 (Ill. 2001). ELPC/Vote Solar argue that this alone should control the interpretation of the phrase "energy supply rate" as it is used in subsection (l)(2). The fact that ELPC and Vote Solar's interpretation of "energy supply rate" is more consistent with the broader legislative intent of the Act only strengthens the conclusion that ComEd should include transmission charges in bill credits for community solar subscribers as described in Section 16-107.5(l)(2). ELPC/VS Init. at 7.

ELPC/Vote Solar explain that electricity bill savings are a significant part of the value proposition for prospective community solar customers. Reducing the value of bill credits will disproportionately affect lower-income customers who are unwilling or unable to pay premiums for the environmental and social benefits of solar. Thus, all else being equal, solar developers are likely to focus on signing up wealthier subscribers, who are less sensitive to monthly energy costs and may decide to subscribe to a community solar project simply for the environmental and social benefit. ELPC/VS Init. at 8.

According to ELPC/Vote Solar, ComEd's decision to exclude transmission charges from community solar bill credits will slow the uptake of community solar in Illinois by subscribers across the board, delaying the economic, environmental, social, and grid resilience benefits envisioned by PA 99-0906. Reducing the value of bill credits will result in higher costs of customer acquisition, which will negatively impact project economics and increase the difficulty of financing community solar projects in Illinois. ELPC/VS Init. at 8.

Diminishing project economics, ELPC/Vote Solar state, will likely further reinforce financing parties' bias against projects that have significant exposure to LMI households. The dynamics of solar project finance (including the availability of federal tax benefits) almost always require that project developers bring in large institutional investors and/or lenders to help finance projects. In general, ELPC/Vote Solar opine, it is harder to finance projects that target or include LMI households, because lenders look to FICO scores to

ensure that these subscribers will pay for their subscriptions. With a lower benefit to subscribers, and tighter overall project economics due to the exclusion of the volumetric transmission charge from any given project's set of revenue streams, project financing parties will likely pressure project developers to avoid projects that have significant exposure to LMI households. At a minimum - if they are willing to accept any project exposure to LMI households - project financing parties are likely to further discount the payment streams provided by LMI households, thus increasing the costs of securing financing for projects with significant LMI exposure. This effect will reinforce project developers and financing parties to focus on projects with exposure to households with high FICO scores. ELPC/VS Init. at 8-9.

Finally, ELPC/Vote Solar state that lowering the value of bill credits will also require the IPA to stretch the budget for renewable energy credits for community solar projects, potentially reducing the number of community solar projects that can be funded through the IPA's adjustable block program. In sum, as financing costs increase, fewer potential community solar projects will pencil, and fewer will be completed. ELPC/VS Init. at 9.

ELPC/Vote Solar further state that the way that distributed community solar projects actually work also supports the conclusion that transmission charges should be included in the bill credits that utilities provide to community solar project subscribers. ELPC/VS Init. at 9. First, distributed community solar reduces transmission system loads. Transmission deferral and avoidance are important values that distributed solar and other distributed energy resources ("DERs") can provide. In system peak periods, when the transmission system peaks, DERs can serve loads on the distribution system to which they are interconnected, thus reducing peak loads at the transmission level. DERs, including community solar, make additional capacity available on the high-voltage transmission system and avoid transmission expansion costs. A major policy reason for the distributed generation programs in many states is to avoid the need for more bulk transmission lines. Indeed, the Illinois General Assembly intended exactly this effect, finding that developing new renewable energy resources in Illinois, including community solar, "will reduce long-term direct and indirect costs to consumers ... by avoiding or delaying the need for new generation, transmission, and distribution infrastructure." 20 ILCS 3855/1-5(6) (Legislative Declarations and Findings). The legislature similarly found that development of new distributed community solar projects will help to "reduce peak demand," thereby saving further costs for all utility ratepayers. *Id.* It is logical that the customers that help spur the development of these projects through community solar subscriptions should be compensated fairly for these system-wide benefits. ELPC/VS Init. at 9-10.

Second, ELPC/Vote Solar note that there is substantial direct evidence that distributed community solar can help avoid transmission capacity costs. Occasionally, examples of near-term avoided transmission costs can be found as a utility adjusts its spending to reflect lower system demands resulting from demand-side resources such as energy efficiency and distributed solar. Indeed, the PA 99-0906 recognizes that reduced consumption and demand-response can help avoid or reduce transmission costs. 220 ILCS 5/8-103B(a). ComEd's decision to exclude transmission charges from community solar bill credits ignores the reality that community solar projects within the utility's service

territory can help to reduce overall system costs and defer/delay the need for new transmission facilities in the future. ELPC/VS Init. at 10-11.

ELPC/Vote Solar state that it is relevant that ComEd's "price to compare" includes both electricity supply charges and transmission services charges. Indeed, the Commission's PlugInIllinois website explains that Transmission Services Charges are "also included in the Electricity Supply Section on your ComEd bill." See <https://www.pluginillinois.org/FixedRateBreakdownComEd.aspx>. This is further evidence that it was reasonable for the General Assembly to use the phrase "energy supply rate" to refer to both electricity supply and transmission services. A contrary interpretation would create inconsistencies between ARES and utility default customers, especially to the extent that many ARES offer a bundled "all-in" rate that includes both electricity supply and transmission to their retail customers. This could require community solar developers to administer different bill credit values for different subscribers to the exact same community solar project. It is unlikely that the legislature would have intended such a complex and inconsistent result. See *People v. Hanna*, 207 Ill. 2d 486, 498 (Ill. 2003) ("Statutes are to be construed in a manner that avoids absurd or unjust results."). ELPC/VS Rep. at 3-4.

4. Staff's Position

Staff explains that the distinction between kilowatt-based charges, which cannot be included in the credit, and kilowatt-hour-based charges, which according to ELPC/Vote Solar are properly credited, seems subtle. However, there is, in fact, a real, meaningful distinction between the two. Staff states that a kilowatt-hour is a measure of energy, while a kilowatt is a measure of power. Energy is a measure of power with respect to time – indeed, a kilowatt hour is a measure of the number of kilowatts (amount of power) used in a specific period, in this case one hour. On the other hand, power is a measure of the amount of electricity a specific thing (a lightbulb or building) uses at a given moment. Since it is well established that technical terms used in a statute will be given their technical meaning if that is the context in which they are employed, see *Outboard Marine Corp. v. Illinois Industrial Comm'n*, 309 Ill. App. 3d 1026, 1029 (2d Dist. 2000), Staff argues that the significant difference between kilowatt based charged and kilowatt hour based charges must be recognized. Staff Rep. at 2-3.

Viewed in this light, Staff opines that the ELPC/Vote Solar argument makes a good deal of sense. The avoided costs of electricity generated by qualified renewable generating projects are volumetric, i.e. the kilowatt-hours of energy created by such projects displace kilowatt-hours generated by traditional sources. Likewise, the transmission service charges, which ComEd in any case includes within supply charges, are measured volumetrically, at least according to the ComEd sample bill used by ELPC/Vote Solar to illustrate this. See ELPC/VS Initial at 4, 5. Further, and significantly, transmission service charges are assessed on a one-to-one basis with the number of kilowatt-hours supplied. *Id.* Accordingly, inclusion of the transmission service charges appears to be called for by statute and the Staff recommends that this aspect of the ELPC/Vote Solar proposal be adopted. Staff Rep. at 3.

5. ISEA's Position

CCSA, ELPC/Vote Solar propose revisions to ComEd's narrow interpretation of the "energy supply rate" to include the transmission services charge in the calculation of bill credits for community solar projects. ISEA considers their arguments on this proposal well-reasoned. Based on the reasons provided by the parties, such as the legislative intent of PA 99-0906 and the structure of ComEd's bills, ISEA recommends that the Commission require ComEd to modify its tariffs to incorporate all volumetric, supply-related charges, such as the "transmission services charge," into the "energy supply rate" for community solar compensation. ISEA Rep. at 3.

6. Commission Analysis and Conclusion

The cardinal rule of statutory construction is to give effect to the legislature's intent, which is best ascertained by giving a statute its plain, ordinary, and popularly understood meaning. See *People v. Hanna*, 207 Ill. 2d 486, 497, 800 N.E.2d 1201, 1207 (2003). At the outset, the Commission observes that the credit to be calculated under Section 16-107.5(1)(2) is comprised of two components – (i) the commodity supplied (i.e., "the electricity produced") and (ii) the rate at which the commodity is to be compensated (i.e., the "energy supply rate"). As explained by ComEd, the reference to "electricity produced" plainly refers to the tangible quantity of electricity produced by the project – no mention is made of any services, whether transmission services or volumetric non-distribution services. Indeed, Section 16-102 of the PUA classifies transmission as a delivery service – not a supply service. 220 ILCS 5/16-102. As a result, we conclude that proposed Rider POGCS correctly identifies only the electricity produced by the project as the amount to be compensated, which gives full effect to the plain language of the statute. The Commission also notes that ELPC/Vote Solar (and the parties supporting their argument) ignore this first component of the calculation of the credit, which, when properly considered, forecloses their argument to expand the credit.

With the commodity clearly identified as the electricity produced, the "energy supply rate" thus cannot be enlarged to compensate other types of services such as transmission. Again, Section 16-102 of the PUA does not classify transmission as a supply service. Given that the plain language of these provisions and the PUA leave no ambiguity regarding the meaning of how the credit must be calculated, the Commission does not find it necessary to rely on extrinsic statutory construction arguments and aids.

B. Indemnification

1. CCSA's Position

CCSA states that the language in the tariffs at Original Sheet No. X5, paragraphs 3-5, contains indemnification provisions related to the interconnection of the system and for inaccuracies in billing that arise from a miscalculation on the developer's part. CCSA is concerned that the proposed indemnity provisions exceed what is provided for in 83 Illinois Administrative Code 466, "Electric Interconnection of Distributed Generation Facilities" ("Part 466") and do not reflect that indemnity should work in both directions. CCSA Init. at 2.

With regard to indemnification specifically related to interconnection of a CS Project, Appendix D to Part 466 sets forth a *Standard Agreement For Interconnection of Distributed Generation Facilities with a Capacity Less Than or Equal to 10 MVA*. Paragraph 3 on Original Sheet No. X5 does not match the indemnification provisions in Section 6.3 of Appendix D. Because paragraph 6 on Original Sheet No. X5 already requires developers to comply with Part 466, CCSA believes paragraph 3 is unnecessary and could lead to uncertainty between the requirements of Part 466 and the requirements of Rider POGCS. CCSA recommends either striking paragraph 3 or amending it to simply refer to the indemnification provisions in the interconnection agreement provided for in Appendix D of Part 466. CCSA Init. at 3.

Paragraphs 4 and 5 contain indemnification provisions that CCSA has never seen in other utility tariffs related to community solar. While not generally opposed to this indemnification related to bill credit errors, CCSA believes that this language should indicate that a CS Project is not liable for any errors that may occur on the part of ComEd. While CCSA is not expecting ComEd to make any errors in billing, the fact remains that all participants are using a new billing arrangement, the subscriber portal that is under development will need to be integrated, and, because of the way data will be transferred (likely through spreadsheets), there is the opportunity for occasional human error. CCSA Init. at 3.

CCSA acknowledges that Section 280.110 of 83 Illinois Administrative Code 280, "Procedures for Gas, Electric, Water and Sanitary Sewer Utilities Governing Eligibility for Service, Deposits, Billing, Payments, Refunds and Disconnection of Service" ("Part 280"), addresses refunds and credits. The intent of Sections 280.110, however, is to correct customers' overpayments made to the utility. In other words, the protections provided for in Section 280.110 only contemplate a system in which a customer pays the utility for service, not necessarily one in which a utility credits customers for a CS subscription or interfaces with a project developer to determine bill credits. CCSA Init. at 3-4.

CCSA feels that this one-way indemnification for ComEd opens developers up to potential risk, in that it is not clear if project developers would be liable for rectifying bill credits that were provided in error, on the part of the utility. This added risk could potentially impact project developers' ability to secure low-cost project financing. CCSA recommends simply replacing paragraphs 4 and 5 on Original Sheet No. X5 with language providing for mutual indemnification. Adding mutual indemnification regarding bill inaccuracies would be a simple way to ensure that neither party is held responsible for errors they did not commit. CCSA Init. at 4.

In addition, CCSA recommends adding a provision that limits liability to the actual damage incurred. Limiting damages will expedite the correction of mistakes by affirming the responsibility to focus on resolution rather than litigation. CCSA Init. at 4-5.

2. ComEd's Position

ComEd notes that while CCSA takes issue with the three indemnification provisions applicable to CS Projects, these concerns are misplaced. The indemnification provisions serve the important function of ensuring that ComEd and its customers do not bear the costs associated with the CS Project's liability and that the CS Project be held

responsible for errors in reporting CS Beneficiaries' or CS Subscribers' interests or meter usage data. ComEd Rep. at 7. These provisions are consistent with existing tariffs and reflect sound regulatory policy that protects customers. *Id.*

First, ComEd explains that CCSA takes issue with paragraph 3 of the Continuing Obligations section, which requires that CS Projects "indemnify the Company and the Company's retail customers against any liability for personal injury or property damage arising from or created by the interconnection or operation of such CS Project." *Id.*; CCSA Init. at 3; Joint Init., Ex. A, Rider POGCS, Sheet No. X6. While ComEd appreciates that certain indemnification provisions already appear in the standard interconnection contract presented in Appendix D to Part 466 of the Administrative Code, these provisions are not exclusive. See 83 Ill. Adm. Code 466, App. D. Indeed, ComEd's existing Rider POG and Rider POGNM have long included this same indemnification provision that ComEd also proposes to include in paragraph 3 of Rider POGCS's Continuing Obligations section. ComEd Rep. at 8; see Pet., ComEd Ex. A, Rider POG, 2nd Revised Sheet No. 293 and Rider POGNM, 2nd Revised Sheet No. 305. As a result, CCSA's proposal, if adopted, would result in holding certain interconnection customers to a different standard than other interconnection customers, based solely on the particular net metering tariff under which they take service. ComEd Rep. at 8. It is unclear to ComEd how this sort of discrimination among customers can be reconciled with Section 9-241's prohibition on utilities creating unreasonable differences between customer classes. *Id.*; see 220 ILCS 5/9-241. It is equally unclear why the Commission would hold CS Projects to a lesser indemnification standard than other interconnection projects, and no justification has been proffered to support such treatment. ComEd Rep. at 8.

Second, ComEd states that CCSA takes issue with paragraphs 4 and 5 of the Continuing Obligations section, which require that CS Projects "indemnify the Company and the Company's retail customers against any liability for inaccuracies in the reporting of a CS Beneficiary's or a CS Subscriber's interest of the CS Project to the Company" and for "inaccuracies in the reporting of a CS Beneficiary's or CS Subscriber's interval meter usage data as provided by the CS Project to the Company," respectively. *Id.*; see CCSA Init. at 3-4; Joint Init., Ex. A, Rider POGCS, Sheet No. X6. While CCSA seems to understand the need for indemnification regarding the CS Project's reporting of CS Beneficiaries' and CS Subscribers' interests and meter usage data, it mistakenly proposes that the utilities' obligations regarding meter usage data also be included here. ComEd Rep. at 8; see CCSA Init. at 3-4. Yet, this argument fails to take into account that ComEd (and all electric utilities) are already subject to a comprehensive regulatory scheme that addresses errors and corrections to billing and meter usage data. ComEd Rep. at 8-9; see, e.g., 220 ILCS 5/9-252 (governing complaints against utilities for excess charges or unjustly discriminatory amounts for its product, commodity, or service); 83 Ill. Adm. Code 280 (establishing fair and equitable procedures governing, *inter alia*, billing, payments, and refunds). As a result, ComEd's legal obligations do not need to be repeated in these indemnification provisions, and the indemnification focus should be limited to these new regulatory participants and the risks they introduce to ComEd and ComEd's retail customers.

3. ELPC/Vote Solar's Position

ELPC agrees with CCSA that ComEd's indemnification provisions should be clarified to ensure that they do not exceed the limitations expressed in the Commission's Part 466 interconnection standards, and that they provide for mutual indemnification to fairly protect all parties to a community solar project. The Commission's Part 466 rules include a "standard interconnection contract" that governs the operation of DG facilities, including indemnity and insurance requirements. See 83 Ill Admin. Code 466, App. D. The Part 466 rules make clear that this contractual language governs all DG interconnections and state that an electric utility "may not impose additional requirements [for interconnection] that are not specifically authorized under this Section unless the applicant agrees." 83 Ill. Adm. Code 466.100. In order to avoid any confusion, ELPC/Vote Solar recommend that ComEd clarify that the interconnection-related indemnity requirements in the CS tariff are the same and do not exceed the interconnection-related indemnity requirements provided in Part 466.

The Part 466 interconnection standards also include mutual indemnity language that protects both the electric utility and the interconnection customer from damages caused by the other party. ELPC and Vote Solar agree with CCSA that ComEd's community solar tariff should include mutual indemnity provisions for consistency with Part 466 and to ensure that all parties are treated fairly.

4. ISEA's Position

CCSA raises concerns that the proposed one-way indemnity provisions would create potential risk to developers that would lead to the inability to secure low-cost project financing. Based on feedback from members, ISEA concurs with CCSA that "a one-way indemnification may impact a project developers' ability to secure low-cost project financing." Therefore, ISEA requests that the Commission adopt CCSA's recommendations to amend Original Sheet No. X5 with language addressing mutual indemnification. ISEA Rep. at 2-3.

5. Commission Analysis and Conclusion

The Commission finds that the indemnification provisions included in Rider POGCS are reasonable. With respect to paragraph 3, this provision already appears in ComEd's other distributed generation interconnection tariffs (Rider POG and Rider POGNM), and intervenors have provided no rationale for why CS Projects should not be held to the same requirement. Indeed, omitting this indemnification requirement from Rider POGCS would result in holding certain interconnection customers to a different standard than other interconnection customers, based solely on the particular net metering tariff under which they take service.

With respect to paragraphs 4 and 5, the Commission is confident that its regulations already address errors and corrections to billing and meter usage data, and is more than sufficient to ensure that ComEd complies with its legal obligations. As a result, CCSA's proposals are not adopted.

C. Statutory Deadline

1. ComEd's Position

As explained by ComEd, Section 16-107.5(*l-5*) requires that a utility file its tariff implementing Section 16-107.5(*l*) within 90 days after PA 99-0906 takes effect, and that the Commission approve the tariff no later than 120 days after the effective date. ComEd Rep. at 9; 220 ILCS 5/16-107.5(*l-5*). Because PA 99-0906 took effect on June 1, 2017, the Commission must approve the tariff no later than September 29, 2017. Notwithstanding Section 16-107.5(*l-5*)'s unambiguous language, however, ICEA argues that the Commission has the authority to enter an interim order preliminarily approving the tariff and then proceed to continue litigating issues in the docket until a date of ICEA's choosing. ComEd Rep. at 9; ICEA Init. at 1. ComEd asserts that such a proposal must be rejected given that the statute provides in no uncertain terms the timeline by which the Commission must act. ComEd Rep. at 9. The dockets cited by ICEA in support of its arguments are inapposite, moreover, and nothing justifies ICEA's argument that the Commission ignore the General Assembly's clear directive in this case. *Id.*

First, ICEA points to Docket No. 12-0484 where the Commission considered ComEd's petition for a peak time rebate ("PTR") tariff required by Section 16-108.6 of the Act. *Commonwealth Edison Co.*, Docket No. 12-0484, Petition (filed Aug. 21, 2012); see ICEA Init. at 1-2. ICEA claims that in response to significant operational issues identified during that proceeding, the Commission approved the proposed tariff via an interim order in order to keep the docket open. ICEA Init. at 2. While ICEA argues that a similar approach should be followed here, ComEd notes that ICEA fails to acknowledge that Section 16-108.6 did not impose a deadline for Commission action. See 220 ILCS 5/16-108.6(g). Indeed, while Section 16-108.6(g) required a utility to file a PTR tariff within 60 days following the Commission's approval of its Advanced Metering Infrastructure Plan pursuant to subsection (c), the statute was silent regarding the date by which the Commission must approve, or approve with modification, the proposed tariff. See 220 ILCS 5/16-108.6(g). As a result, under Section 16-108.6(g), the Commission had the discretion to enter an interim order, but no such discretion exists here.

Second, ComEd states that ICEA's reference to the approval of ComEd's Rate Governmental Aggregation Programs ("Rate GAP") to support its end run around Section 16-107.5(*l-5*)'s deadline is similarly misplaced. See ICEA Init. at 2. ComEd proposed Rate GAP under Section 9-201 of the PUA, which is subject to a completely different filing mechanism and approval process. 220 ILCS 5/9-201(b). As such, the approval of Rate GAP has no bearing on the specific legislative directive that the Commission approve ComEd's proposed Rider POGCS and related tariffs within 120 days of the effective date of PA 99-0906.

2. ICEA's Position

ICEA raises several concerns about ComEd's proposed new Rider POGCS and other tariff changes. ICEA does not propose language changes to ComEd's proposed tariff language, in part because many of ICEA's issues are more general market rule or competitive balance issues that could not be resolved by tariff language changes alone. But also, as ICEA notes, because there was insufficient time and process in this docket

to date to fully vet the issues that ICEA raised. As a result, ICEA recommends that the Commission issue an interim order in this docket approving Rider POGCS and other tariff changes, but allowing additional time to address and resolve other contested issues.

ICEA raises the following concerns, but notes that it is a preliminary list and may grow:

- RES liability for CS Project data. ICEA explains that in the normal course of business ComEd reports usage data to the RTO for billing purposes, and that ComEd frequently adjusts that data internally. For CS Beneficiaries or CS Subscribers, ComEd's reports to the RTO are not only based on ComEd's data, but also the data reported to ComEd by the CS Project(s). If the data is incorrect, ICEA avers that RES could be subject to liability and/or a loss, potentially without legal recourse.
- Competitive imbalances in rebates. ICEA explains that ComEd's tariff provides a credit for both energy and capacity for bundled customers, while ComEd does not adjust the costs to a RES for capacity or transmission based on community solar shares. ICEA contends this creates a competitive imbalance.
- ComEd's use of purchased CS Supply. ICEA explains that Rider POGCS sets out certain scenarios in which ComEd purchases the energy output of a CS Project. ICEA submits that alternative approaches should be considered.
- Bill presentment. ICEA submits that while informal discussions have covered certain aspects of how a customer will be provided information about their subscriptions or other CS Project interests, ICEA did not see formal discussion from ComEd about how that would be addressed on a utility-consolidated bill or how RES would be expected to address it on a RES-issued single bill.

ICEA states that it does not take a position on recommendations by CCSA and ELPC/Vote Solar. Rather, argues ICEA, the issues raised provide further evidence that more process is necessary.

3. ELPC/Vote Solar's Position

ELPC and Vote Solar do not oppose ICEA's request, with the caveat that the Commission should definitively resolve the value of the bill credit (i.e. whether transmission should be included) by the statutory deadline. The bill credit value is primarily a legal issue and the Commission need not wait to resolve it. It is also important to settle this matter quickly so that the IPA and other stakeholders have a clear understanding of bill credit values by the time the IPA issues its draft long-term renewable resources plan at the end of September. The IPA will need to account for the value of community solar bill credits in order to accurately establish the value of solar renewable energy credits ("SRECs") for community solar projects in its long term plan. ELPC/Vote Solar opine that the timing of the IPA's long-term plan is likely one of the reasons that the legislature created such a tight statutory deadline for the Commission's review of utility bill credit tariffs in PA 99-0906.

ELPC/Vote Solar suggest that if the Commission chooses to commence additional proceedings, it should consider coordinating a further review of ComEd's tariff with an investigation of the Ameren and MidAmerican tariffs to ensure that all three of these tariffs receive appropriate scrutiny and an opportunity for interested stakeholders to comment. In contrast to the present ComEd docket, there has been no opportunity for stakeholders to review and comment on Ameren or MidAmerican's tariffs to date. ELPC and Vote Solar have particular concerns about Ameren's tariff and believe there would be great value in a subsequent Commission investigation that includes all three utility tariffs. ELPC and Vote Solar agree with ICEA's recommendation that any subsequent proceedings be timed so that they are complete prior to the Commission's approval of the IPA's long-term renewable resources plan and associated solar programs.

4. CCSA's Position

CCSA supports ICEA's suggestion for the issuance of an interim order to satisfy the statutory deadline, followed by a process that allows the Commission and interested parties to address the rider in more depth. While Rider POGCS reflects the investment of a great deal of effort and consideration by ComEd, it appears that multiple stakeholders among the community solar and retail electric supplier communities agree that further consideration will improve the rider and the odds of community solar succeeding in Illinois. If the Commission favors ICEA's process proposal, CCSA encourages the Commission to not adopt any particular schedule, but rather rely on the ALJ to consider the parties' views and then adopt an appropriately expeditious schedule.

5. ISEA's Position

Based on the critical issues identified by ICEA and by the parties above, ISEA conditionally supports ICEA's proposal that the Commission issue an interim order on or before September 29, 2017 approving Rider POGCS and establish a robust Staff-led workshop process with a set deadline for a final order prior to the opening of the Adjustable Block Program. ISEA's support of ICEA's proposal, however, is limited by ISEA's concern with having a final order so close to the opening of the Adjustable Block Program. Adoption of an order so close to the opening of the Adjustable Block Program could stall overall community solar participation as developers may be risk-adverse to spending significant time and money developing projects and securing subscribers knowing that the terms and conditions of Rider POGCS could significantly change. Additionally, stakeholders planning to engage in the IPA's Long-Term Renewable Resource Plan process, like the solar industry, need a firm understanding of the value of the energy supply rate prior to the development of the Adjustable Block Program pricing framework, as the IPA will likely use the energy and net metering revenue as an input to determine appropriate solar renewable energy credit prices for community solar projects. Therefore, ISEA recommends that the Commission settle on whether to incorporate the transmission services charge into the value of the energy supply rate when it issues an interim order and adopt a timeframe in which a final order would be issued prior to the Commission's approval of the IPA's LTRRP. ISEA Rep. at 3-4.

6. Commission Analysis and Conclusion

Section 16-107.5(*l*-5) requires that the Commission approve, or approve with modification, Rider POGCS within 120 days of P.A. 99-0906's effective date, or June 1, 2017, the Commission is without authority to issue an Interim Order preliminarily approving the tariff, and thereafter allow the litigation to continue until some future date. While the Commission appreciates the extremely compressed timeframe, the legislature did not vest the Commission with the discretion to extend the docket as ICEA posits. Therefore, the Commission will follow the General Assembly's directive and approve, or approve with modification, proposed Rider POGCS and related tariffs on or before September 29, 2017.

The Commission wants to ensure the smooth and successful implementation of community supply offerings, and thus encourages stakeholders to continue to work together and engage in discussions regarding any issues that might arise or require further clarification.

Should the parties identify a change or a contested issue, the Commission has the authority to revise tariffs under a Section 9-201 tariff filing or to open an investigation pursuant to Section 9-250.

V. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Commonwealth Edison Company is an Illinois corporation engaged in the transmission, distribution, and sale of electricity to the public in Illinois, and is a public utility as defined in Section 3-105 of the Act;
- (2) the Commission has jurisdiction over Commonwealth Edison Company and the subject matter of this proceeding;
- (3) the statements of fact set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (4) Proposed Rider POGCS and the revisions to Rate RESS, Rider POG, Rider POGNM, Rider PORCB, and Rider NAM, as modified by Ex. A. to the Joint Initial Comments and as modified herein, meet the requirements of Sections 16-107.5(*l*) and (*l*-5) of the Act, and are just and reasonable;
- (5) Proposed Rider POGCS and the revisions to Rate RESS, Rider POG, Rider POGNM, Rider PORCB, and Rider NAM, are approved as modified by Ex. A. to the Joint Initial Comments and as modified herein;
- (6) new tariff sheets in conformance with this Order shall be filed by Commonwealth Edison Company within 10 days of entry of this Order and shall reflect an effective date no later than October 9, 2017; and
- (7) the existing and effective tariff sheets to be replaced by those authorized in Finding (6) should be permanently canceled and annulled as of the effective date of the new tariff sheets authorized in Finding (6).

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Verified Petition of Commonwealth Edison Company requesting approval of (i) its proposed Rider POGCS, modified as necessary in accordance with this Order, and (ii) conforming revisions to Rate RESS, Rider POG, Rider POGNM, Rider PORCB, and Rider NAM, modified as necessary in accordance with this Order, is hereby approved.

IT IS THEREFORE ORDERED that the tariff sheets at issue in this docket and presently in effect are hereby permanently canceled and annulled effective at such time as the new tariff sheets approved herein become effective by virtue of this Order.

IT IS FURTHER ORDERED that Commonwealth Edison Company is authorized to and directed to file tariffs and containing the terms and provisions consistent with and reflective of the findings and determinations made in this Order, which shall be placed into effect pursuant to the findings of this Order.

IT IS FURTHER ORDERED that any objections, motions, or petitions filed in this proceeding that remain unresolved should be disposed of in a manner consistent with the ultimate conclusions contained in this Order.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 27th day of September, 2017.

(SIGNED) BRIEN SHEAHAN

Chairman